

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
NORTHERN DIVISION

RICHARD McWHORTER,

Plaintiff,

v.

Case No. 2:20-cv-00033-JMB

WAL-MART STORES EAST I, LP; THF
MARION COUNTY DEVELOPMENT, LLC;
and KCKR, LLC D/B/A SHAWN'S BOBCAT
SERVICE

Defendants.

and

WAL-MART STORES EAST I, LP,

Defendant/Cross-Claimant,

v.

MARION COUNTY DEVELOPMENT, LLC,

Defendant/Cross-Claim Defendant,

and

KCKR, LLC D/B/A SHAWN'S BOBCAT
SERVICE,

Defendant/Cross-Claim Defendant.

DEFENDANT/CROSS-CLAIMANT, WAL-MART STORES EAST I, LP'S CROSS-CLAIM FOR
CONTRIBUTION DIRECTED AGAINST DEFENDANTS/CROSS-CLAIM DEFENDANTS
MARION COUNTY DEVELOPMENT, LLC, AND KCKR, LLC D/B/A
SHAWN'S BOBCAT SERVICE

COMES NOW Defendant/Cross-Claimant, WAL-MART STORES EAST I, LP, by and
through its attorneys, BETH C. BOGGS, and BOGGS, AVELLINO, LACH & BOGGS, L.L.C.,



and for its Cross-Claim for Contribution Directed Against Defendants/Cross-Claim Defendants, MARION COUNTY DEVELOPMENT, LLC and KCKR, LLC D/B/A SHAWN'S BOBCAT SERVICE states as follows:

1. Plaintiff RICHARD McWHORTER, has filed his Second Amended Complaint against Defendant/Cross-Claimant, Wal-Mart Stores East I, LP, alleging negligence on the part of Wal-Mart Stores East I, LP, in instructing Plaintiff to make a delivery of automotive batteries and parts to the location's door nearest the automotive department, at which location Plaintiff slipped and fell, allegedly resulting in injuries to Plaintiff.

2. Defendant/Cross-Claimant, Wal-Mart Stores East I, LP, has filed its Answer to Plaintiff's Second Amended Complaint, denying liability for the injuries that were allegedly sustained by Plaintiff.

3. On February 12, 2018, Plaintiff was working as an employee/truck driver for USF Holland, Inc., making a delivery of automotive batteries and parts to a Hannibal, Missouri location of Wal-Mart Stores East I, LP.

4. Plaintiff alleges that snow, ice or other precipitation fell in the general area of Hannibal, Missouri, in the days preceding Plaintiff's fall.

5. Plaintiff alleges that Defendant/Cross-Claim Defendant, THF Marion County Development, LLC, agreed to maintain the common areas of the subject real property in a neat, clean and orderly condition and to removal all ice and snow from the common areas including service areas, driveways, areas of ingress and egress, sidewalks and other pedestrian ways.

6. Plaintiff alleges that Defendant/Cross-Claim Defendant, THF Marion County

Development, LLC, hired Defendant/Cross-Claim Defendant, KCKR, LLC, d/b/a Shawn's Bobcat Service to remove all ice and snow from the aforesaid common areas at the subject premises.

7. Plaintiff alleges that Defendant/Cross-Claim Defendant, KCKR, LLC, d/b/a Shawn's Bobcat Service plowed, was retained to shovel and/or treat the loading dock area, as well as other common areas so that they were free of all ice and snow and were safe for deliveries and/or other invitees.

8. Plaintiff alleges that Defendant/Cross-Claimant Wal-Mart Stores East I, LP had a duty to make the delivery area reasonably safe for the delivery of the automotive batteries and parts, and that Defendant/Cross-Claimant Wal-Mart Stores East I, LP, was negligent in instructing Plaintiff to make a delivery at a location that had not been cleared of snow and/or ice, or where there was an unnatural accumulation of ice and water, and/or in failing to warn Plaintiff of same.

9. Plaintiff further alleges that Defendant/Cross-Claimant Wal-Mart Stores East I, LP, had a duty of ordinary care to make the premises safe and breached that duty through the actions described in paragraph 8, above.

10. If Defendant/Cross-Claimant, Wal-Mart Stores East I, LP, is found liable to Plaintiff, which liability is specifically denied, then Defendant/Cross-Claimant Wal-Mart Stores East I, LP, is entitled to contribution from Defendant/Cross-Claim Defendants, THF Marion County Development, LLC, and KCKR, LLC, d/b/a Shawn's Bobcat Service in the amount of any judgment entered against Defendant/Cross-Claimant, Wal-Mart Stores East I, LP, in excess of its pro-rata share of said liability.

WHEREFORE, Defendant/Cross-Claimant, Wal-Mart Stores East I, LP, requests that if Plaintiff recovers against it, then Defendant/Cross-Claimant be granted a Judgment against Defendant/Cross-Claim Defendants, THF Marion County Development, LLC, and KCKR, LLC, d/b/a Shawn's Bobcat Service, in an amount commensurate with its relative degree of fault.

DEFENDANT DEMANDS TRIAL BY JURY

Respectfully submitted,

WAL-MART STORES EAST I, LP

By: /s/Beth C. Boggs
Beth C. Boggs, #43089
BOGGS, AVELLINO, LACH & BOGGS, L.L.C.
9326 Olive Blvd., Suite 200
St. Louis, MO 63132
(314) 726-2310 Telephone
(314) 726-2360 Facsimile
bboggs@balblawyers.com
Attorney for Defendant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was electronically filed with the Clerk of the Circuit Court for the United States District Court, Eastern District of Missouri, by using the Court's CM/ECF Electronic Filing System this 11th day of December, 2020, with an electronic copy to be served by operation of the Court's electronic filing system upon all counsel of record, including the following:

Eric J. Carlson, #47423
Byron Carlson Petri & Kalb, LLC
411 St. Louis Street
P.O. Box 527
Edwardsville, IL 62025
(618) 656-0066 – Telephone
(618) 655-4004 – Facsimile
ejc@byroncarlson.com
Attorney for Plaintiff

Rachel Ude